

## Chapter IV

# The Executive Branch

## The Governor

The supreme executive power of the State of California is vested in the Governor, whose duty it is to see that the law is faithfully executed.<sup>1</sup> The Governor is elected by the people for up to two terms of four years,<sup>2</sup> and receives an annual salary of \$173,987.<sup>3</sup>

No person is eligible for the office of Governor who is not 18 years of age, and who is not a citizen of the United States and a resident of this state.<sup>4</sup>

The Governor is Commander in Chief of the militia of this state.<sup>5</sup> He or she is the sole official organ of communication between the government of this state and the federal government and the other states of the United States.<sup>6</sup> He or she must supervise the official conduct of all executive and ministerial officers, and must see that all offices are filled and their duties performed.<sup>7</sup>

The Governor may appoint and fix the salaries of such assistants and other personnel as deemed necessary for the proper conduct of his or her office. The salaries of these staff assistants may not exceed the salaries paid to certain statutorily appointed state officers.<sup>8</sup> The Governor normally appoints a staff member to serve as Legislative Secretary whose primary function is to maintain liaison between the executive office and the Legislature.

In the event of a vacancy occurring in the office of Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, or on the State Board of Equalization, the Governor nominates a person to fill the vacancy subject to confirmation by the majority of the Senate and a majority of the Assembly. A successful nominee would hold office for the balance of the unexpired term. The chief deputy shall act in the capacity of the aforementioned constitutional officers until the Governor appoints a nominee and said nominee is confirmed.<sup>9</sup>

When any office becomes vacant and no method is provided by law for filling such vacancy, the Governor may, by appointment, fill the vacancy until a successor qualifies.<sup>10</sup>

<sup>1</sup> *Constitution*, Article V, Section 1.

<sup>2</sup> *Constitution*, Article V, Section 2. "In case any two or more persons have an equal and highest number of votes for either Governor or Lieutenant Governor, the Legislature shall, by a joint vote of both houses, choose one of the persons to fill the office." *Elections Code*, Section 15654.

<sup>3</sup> Formerly *Constitution*, Article V, Section 12 (repealed June 5, 1990). *Government Code*, Section 12000. This section set the Governor's salary at \$85,000 as of January 1987. On June 5, 1990, the voters adopted Proposition 112, which added Article III, Section 8 to the *Constitution*, creating the California Citizens Compensation Commission. The commission has the authority to review and increase the salary levels of the Governor, Lt. Governor, Atty. General, Controller, Treasurer, Sec. of State, Sup. of Public Instruction, Insurance Commissioner, Board of Equalization Members and Members of the State Legislature, and has set the Governor's salary at its current level. The California Citizens Compensation Commission met and voted to reduce the salaries and benefits of most elected officials by 18% on May 20, 2009 and June 30, 2009. Salaries took effect December 7, 2009. See "California Citizens Compensation Commission Salary and Benefit Resolution, May 20, 2009."

<sup>4</sup> *Constitution*, Article V, Section 2. This section requires that the Governor be an elector. An elector is described as a person of the age of 18 years. *United States Constitution*, Amendment XXVI; *Constitution*, Article II, Section 2. The President of the United States must be a natural born citizen, 35 years of age and a resident of the United States for 14 years. *United States Constitution*, Article II, Section 1(5). The five-year residency requirement for Governor prescribed by the California *Constitution* conflicts with U.S. Supreme Court decisions and is therefore invalid. *Op. Sec'y of State*, Opinion 76 SOS 1(E/PR), Feb. 4, 1976.

<sup>5</sup> *Constitution*, Article V, Section 7.

<sup>6</sup> *Government Code*, Section 12012.

<sup>7</sup> *Government Code*, Sections 12010 and 12011.

<sup>8</sup> *Government Code*, Sections 11550, 11552 and 12001.

<sup>9</sup> *Government Code*, Section 1775. See *Langren v. Deukmejian* (1988) 45 Cal.3d 727. See also, *Legislative Counsel Opinion #238* (Assembly Daily Journal, February 25, 1998, p. 4765-4669).

<sup>10</sup> *Constitution*, Article V, Section 5.

The Governor's appointment power also extends over two significant areas of state government. First, the Governor has authority to fill vacancies in the judiciary (superior, appeals and Supreme courts) and to fill newly created judgeships.<sup>11</sup> Second, the Governor has power to appoint a large number of positions throughout the executive department, subject to confirmation by the State Senate.<sup>12</sup>

The Governor may offer rewards, not exceeding \$50,000, for information leading to the arrest and conviction for certain crimes.<sup>13</sup>

When a fugitive from justice under the laws of another state is found in this state and a written demand for his or her extradition has been received, it is the duty of the Governor to have him or her arrested and delivered up to the executive officer of the demanding state.<sup>14</sup>

The Governor is required to report to the Legislature each reprieve, pardon and commutation granted, stating the pertinent facts in each case and his reasons for granting it. The Governor may not, however, grant a pardon or a commutation in a case of impeachment or to a person who was twice convicted of a felony unless a majority of the Supreme Court (four justices) concurs.<sup>15</sup>

The Governor must communicate with the Legislature, during each calendar year, regarding the condition of the state and may make recommendations.<sup>16</sup> The Governor must also submit an itemized budget to the Legislature within the first 10 days of each year.<sup>17</sup> He or she may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he or she has convened it; and, when so convened, the Legislature has no power to legislate on any subject other than those specified in the proclamation.<sup>18</sup> The call for a special session of the Legislature may be expanded by the Governor adding additional items after the Legislature has convened and prior to adjournment.<sup>19</sup>

The Governor may veto any bill passed by the Legislature and return it with objections to the house of origin. The Governor may also reduce or eliminate one or more items of appropriation while approving other portions of the bill.<sup>20</sup> (See Chapter 9 for further information on the item veto power.)

<sup>11</sup> *Constitution*, Article VI, Section 16; *Government Code*, Section 71180.

<sup>12</sup> See Chapter II, *supra*, page 20.

<sup>13</sup> For a listing of the crimes for which the Governor may offer this reward, see *Penal Code*, Section 1547.

<sup>14</sup> *Penal Code*, Sections 1548.1 and 1548.2; *United States Constitution*, Article IV, Section 2; 18 U.S.C.A. 3182.

<sup>15</sup> *Constitution*, Article V, Section 8; *Penal Code*, Section 4800. A pardon is usually understood to exempt an individual from his or her punishment for the crime of which he or she has been convicted, and additionally to remove any disqualification or disability that necessarily occurs as a result of the conviction. However, under the habitual criminal statute in California it has been held (*People v. Biggs*, 9 Cal.2d 508) that it does not relieve the offender of the prior conviction within the meaning of that statute which prescribes increased punishment for habitual criminals or those previously convicted of a crime. See also, 8 *Op. Atty. Gen.* 87.

<sup>16</sup> *Constitution*, Article V, Section 3. This is commonly referred to as the Governor's "state of the State message."

<sup>17</sup> *Constitution*, Article IV, Section 12(a); *Government Code*, Section 13337.

<sup>18</sup> *Constitution*, Article IV, Section 3(b). See also, *Martin v. Riley* (1942) 20 Cal.2d 28 and *Legislative Counsel Opinion No. 2105*, *Journal of the Assembly*, 1960 Second Extraordinary Session, p. 13.

<sup>19</sup> 4 *Op. Atty. Gen.* 53. " \* \* \* while some doubt may exist as to the authority of the Governor, the applicable decisions in other jurisdictions and the practice in this State are such that the courts would hold that the Governor may supplement or amend his call to the Legislature after the session has been convened and prior to adjournment."

<sup>20</sup> *Constitution*, Article IV, Section 10(e). *St. John's Well Child and Family Center v. Schwarzenegger* (2010). The power of item veto is not given to the President of the United States, who must approve or veto the bill in its entirety. *United States Constitution*, Article I, Section 7. The word "veto" means "I forbid" in Latin. The veto process originated in ancient Rome, where plebe tribunals had the power to disapprove measures recommended by the Senate.

Prior to 1972, when legislative sessions were of an indeterminate duration, the Governor had the power to adjourn the Legislature if the two houses disagreed as to the time of adjournment.<sup>21</sup>

### ***Joint Conventions and Gubernatorial Inaugurations: 1849 to 1967***

From 1849 to 1940, the Constitution mandated that the November gubernatorial election results be sealed and sent to the Assembly Speaker, to be unsealed in a legislative joint convention the first week of January.<sup>22</sup> For many years, a joint convention was held in January and included an elaborate ceremony to unseal the election results and inaugurate the Governor and Lieutenant Governor in the Assembly Chamber. This ceremony was part of a busy opening day of session, when the Legislature organized and elected its officers. Although the ceremonial unsealing of election results was abandoned in the 1940s, the inaugural ceremonies continued to be held in the Assembly Chamber into the 1960s.

January 1963 was the last time a governor was sworn-in on the Assembly floor, during the inauguration of Edmund G. “Pat” Brown.<sup>23</sup> In January 1967, Ronald Reagan took the oath of office in the Capitol rotunda, and later that day he briefly addressed a joint convention in the Assembly Chamber. Three days later, the Legislature met in joint convention on the west steps of the Capitol for an inaugural ceremony for Governor Reagan.<sup>24</sup> This was the last time the Legislature met in joint convention for the purpose of a gubernatorial inauguration.<sup>25</sup> Due to changes in the Constitution, the Legislature now organizes in December, and the Governor takes the oath in January, usually in a private or public ceremony in or near the Capitol building. The Legislature is no longer officially involved in the inauguration of the Governor.

### ***The Governor's Legislative Role***

While the trichotomy of the separation of powers among the executive, legislative and judicial branches is quite convenient and useful, it can, like many other academic divisions, be misleading.

The Governor operates, out of necessity, as a “legislator” to accomplish and put into execution the policies of the administration. He or she initiates and influences legislation, submits views on the problems confronting the state, and details policy proposals before the Legislature.

The exercise of the veto must be viewed as a quasi-legislative power. The Governor’s Budget is replete with policy as well as fiscal implications. In addition, the Governor may call the Legislature into extraordinary session to consider specific issues identified, defined and limited by him or her.

The Governor also implements policy through executive orders and Governor’s Reorganization Plans (GRP’s). (See Chapter 9 for more information on GRP’s.)

<sup>21</sup> Acting Governor Hugh M. Burns did utilize this power to bring the 1968 Regular Session of the Legislature to a close. See *Journal of the Assembly, 1968 Session*, p. 7256 and 7311. See also, *Journal of the Senate, 1968 Session*, p. 4907 and 4931. The regular sessions of the Legislature are now adjourned by operation of law. See *Constitution*, Article IV, Section 3(a).

<sup>22</sup> *Constitution*, Article V, Sec. 4 (repealed). This law also provided for the Legislature electing the Governor in the event of a tie vote.

<sup>23</sup> *Assembly Journal*, 1963 Session, p. 51.

<sup>24</sup> *Statutes of 1967*, Resolution Chapter 1. (Senate Concurrent Resolution 2.)

<sup>25</sup> *Assembly Journal*, 1967 Session, pp. 9, 79.

Through the combination of these and other powers, and with the assistance of staff, the Governor has considerable impact upon and involvement with the legislative process.

### ***The Governor's Cabinet***

In addition to his or her immediate staff, the Governor utilizes a cabinet, composed of the secretaries or directors of 11 major state agencies (Business, Transportation and Housing; Education; Environmental Protection; Finance; Food and Agriculture; Health and Human Services; Labor and Workforce Development; Natural Resources; State and Consumer Affairs; Veterans Affairs; Corrections and Rehabilitation).

This cadre serves as the Governor's chief policy advisory body and, in their individual capacities, implement and coordinate the Governor's policies throughout the state. Most agencies employ legislative liaisons who work directly with the Legislature on issues falling under the purview of their particular agency.

The cabinet supplies the Governor with a comprehensive view and current résumé of state operations and serves as a source for long-range planning.

### **Succession to Office of Governor**

The Constitution provides that in the event of a vacancy in the office of Governor, the Lieutenant Governor shall succeed to that office. Upon succeeding to the office of Governor, the former Lieutenant Governor could then nominate a successor to the Lieutenant Governorship. The Lieutenant Governor also serves as *acting* Governor during the impeachment, absence from the state, or other temporary disability of the Governor.<sup>26</sup> In September 2010, Lieutenant Governor Abel Maldonado signed several bills while Governor Schwarzenegger was absent from the country. Prior to 2010, the last Lieutenant Governor to sign or veto a bill was Lieutenant Governor Mike Curb (1979–1983).<sup>27</sup>

In the event both the offices of Governor and Lieutenant Governor become vacant, the President pro Tempore of the Senate would then succeed to the office of Governor; if there is no President pro Tempore of the Senate, then the Speaker of the Assembly would become Governor; if there is no Speaker of the Assembly, then the Secretary of State; if there is no Secretary of State, then the Attorney General; if there is no Attorney General, then the Treasurer; or if none of them, then the Controller. If none of the above officers were available because of a war or an enemy-caused disaster, a person designated by law would become Governor.<sup>28</sup> The authority to raise the question concerning a vacancy in the office of Governor, or the existence of a temporary disability, is vested in a Commission on the Governorship. This commission

<sup>26</sup> *Constitution*, Article V, Section 10.

<sup>27</sup> Lieutenant Governor Goodwin Knight also signed bills as Acting Governor, including the Budget Bill in 1953. On December 10, 1972, Lt. Governor Ed Reinecke signed legislation. On May 30, 1976, the President pro Tempore of the Senate, James Mills, was Acting Governor and signed several bills, including one of his own. Also in May 1976, Lieutenant Governor Mervyn Dymally became California's first black Acting Governor, although he did not act on any legislation in that capacity.

<sup>28</sup> *Constitution*, Article V, Section 10; Article IV, Section 21; *Government Code*, Sections 12058 and 12061. There are similar statutory provisions governing the succession to the office of Governor-elect and Lieutenant Governor-elect in the event of their death or disability or other failure to take office. See *Government Code*, Sections 12058.5 and 12059.

is composed of the President pro Tempore of the Senate, the Speaker of the Assembly, President of the University of California, Chancellor of the State Colleges, and the Director of Finance. If such a question is raised, the Supreme Court of the State of California is vested with exclusive jurisdiction over the matter.<sup>29</sup>

In case of impeachment of the Governor or officer acting as Governor, his or her absence from the state, or other temporary disability to discharge the powers and duties of office, then the powers and duties of the office of Governor devolve upon the same officer as in the case of vacancy in the office of Governor, but only until the disability shall cease.<sup>30</sup>

Two of California's Governors have died in office, and five have resigned. Thus, seven Lieutenant Governors have succeeded to the office of Governor since 1849.<sup>31</sup> No officer other than the Lieutenant Governor has ever succeeded to the Governorship.

## The Lieutenant Governor

The Lieutenant Governor is elected at the same time and places and in the same manner as the Governor. Also similar to the Governor are the qualifications, term of office, and limit to two terms.<sup>32</sup> In case of a vacancy in the office of Governor, the Lieutenant Governor shall become Governor. In the event of impeachment, absence from the state or temporary disability of the Governor, he or she shall serve as acting Governor.<sup>33</sup> The salary of the Lieutenant Governor is \$130,490 per annum.<sup>34</sup>

The Constitution provides that the Lieutenant Governor shall be President of the Senate, but shall have only a casting vote.<sup>35</sup> The purpose of a casting vote is to break a tie. As a tie vote, in effect, defeats a proposition, the casting vote may be used only if it will provide the necessary majority required. For example, a bill in the California Senate requires 21 votes for passage and if the vote is 20 to 20, the Lieutenant Governor has a casting vote, but he or she does not have a casting vote if the vote is 19 to 19, because even if he or she would cast an "Aye" vote, there would only be 20 affirmative votes on the bill.

Until 1915, the duties of the Lieutenant Governor were to preside over the Senate and, under certain conditions, to act in place of the Governor. Since 1915, however, additional duties have been imposed upon him or her as a member of various boards and commissions. The Lieutenant Governor serves as one of the seven ex officio members of the Regents of the University of California;<sup>36</sup> Chairman of the Commission for Economic Development;<sup>37</sup>

<sup>29</sup> *Constitution*, Article V, Section 10; *Government Code*, Sections 12070–12076. See also, *In re Petition of Commission on Governorship* (1979) 26 Cal.3d 110.

<sup>30</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058.

<sup>31</sup> Lieutenant Governors who have succeeded to the office of Governor are: John McDougal, 1851, on resignation of Governor Peter H. Burnett; John G. Downey, 1860, on resignation of Governor Milton S. Latham; Romualdo Pacheco, 1875, on resignation of Governor Newton Booth; Robert W. Waterman, 1887, on death of Governor Washington Bartlett; Wm. D. Stephens, 1917, on resignation of Governor Hiram W. Johnson; Frank F. Merriam, 1934, on death of Governor James Rolph, Jr.; and Goodwin J. Knight, 1953, on resignation of Governor Earl Warren.

<sup>32</sup> *Constitution*, Article V, Sections 9 and 11.

<sup>33</sup> *Constitution*, Article V, Section 10.

<sup>34</sup> See also, *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47. See also, p. xxii.

<sup>35</sup> *Constitution*, Article V, Section 9.

<sup>36</sup> *Constitution*, Article IX, Section 9.

<sup>37</sup> *Government Code*, Section 14999.1.

and, a member of the State Lands Commission;<sup>38</sup> California Emergency Council;<sup>39</sup> the Reciprocity Commission;<sup>40</sup> and a Trustee of the California State University.<sup>41</sup>

### Other State Officers

The Secretary of State, Attorney General, Treasurer, Controller, and Superintendent of Public Instruction, are elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, to hold office for a maximum of two four-year terms.<sup>42</sup> The four elected members of the Board of Equalization are elected at the same time as the Governor to four-year terms and are also subject to a two-term limit.<sup>43</sup> Finally, there is the Insurance Commissioner who is elected to no more than two four-year terms, also at the same time and place, and in the same manner as the Governor.<sup>44</sup>

#### *The Secretary of State*

The Government Code provides that the Secretary of State shall keep a correct record of the official acts of the Legislative and Executive Departments of the government and perform such other duties as may be assigned by law.<sup>45</sup> The Secretary's salary is \$130,490 per annum.<sup>46</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the Secretary of State becomes the third officer next in line of succession to the office of Governor.<sup>47</sup>

The Secretary of State is charged with the custody of the enrolled copy of the Constitution, all acts and resolutions passed by the Legislature, the Journals of each house, the Great Seal, and all books, records, deeds, parchments, maps and papers, kept or deposited in the office pursuant to law.<sup>48</sup> The Secretary must petition the Supreme Court if redistricting maps are not certified, or if they are rejected via referendum.

"Public documents must remain at the place designated by law, and can only be removed where authorized by law. The place for deposit of the enrolled copy of the Constitution and the original laws is the office of the Secretary of State and no authority is granted expressly or by implication to exhibit them elsewhere."<sup>49</sup>

The Secretary is the custodian of the public archives and must maintain and properly equip safe and secure vaults for the preservation of the documents placed in his or her charge.<sup>50</sup> Any item that is required by law to be delivered

<sup>38</sup> *Public Resources Code*, Section 6101.

<sup>39</sup> *Government Code*, Section 8575.

<sup>40</sup> *Vehicle Code*, Section 2600.

<sup>41</sup> *Education Code*, Section 66602.

<sup>42</sup> *Constitution*, Article V, Section 11; *Constitution*, Article IX, Section 2.

<sup>43</sup> *Constitution*, Article XIII, Section 17.

<sup>44</sup> *Insurance Code*, Section 12900, as amended by *Statutes of 1993*, Chapter 1227.

<sup>45</sup> *Government Code*, Section 12159.

<sup>46</sup> *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>47</sup> *Government Code*, Section 12058. The Secretary of State succeeds after the President pro Tempore of the Senate and the Speaker of the Assembly.

<sup>48</sup> *Government Code*, Section 12160.

<sup>49</sup> 12 *Op. Atty. Gen.* 147. See also, 52 *Op. Atty. Gen.* 83.

<sup>50</sup> *Government Code*, Section 12222.



to or filed with the Secretary shall be placed in the archives.<sup>51</sup> The Secretary, on his or her own initiative, may also place any item that he or she deems to be of historical value in the archives.<sup>52</sup> In addition, the Department of General Services may direct the Secretary to store items from state agencies. These materials may be returned to the agency, with the Department of General Services' approval, should the Secretary deem them to be without historical value.<sup>53</sup>

The Secretary of State is the chief elections officer of the state and has the responsibility for administering the provisions of the Elections Code.<sup>54</sup> Foremost among these duties is preparing and ordering the printing of the ballot pamphlet. This pamphlet contains a complete copy of the text of all the measures submitted to the voters; a summary of the measure prepared by the Attorney General; an analysis of the measure prepared by the Legislative Analyst; arguments in support of the measure and rebuttals thereto; and the total vote on the measure in the Senate and the Assembly if the proposition was passed by the Legislature.<sup>55</sup> Pamphlet text is available online via the Secretary of State's internet web site (<http://www.sos.ca.gov>).

Approximately 12.2 million election pamphlets were printed and distributed for the 2010 general election. Of this total, approximately 11.5 million pamphlets were printed in English and 755,000 pamphlets in foreign languages.

The Secretary must compile the election returns and issue certificates of election to successful candidates;<sup>56</sup> compile the returns and certify the results of initiative and referendum elections;<sup>57</sup> certify acts delayed by referendum and prepare and file a statement of the vote.<sup>58</sup>

He or she shall record all official acts of the Legislature;<sup>59</sup> conveyances made to the state;<sup>60</sup> all articles of incorporation filed in his or her office;<sup>61</sup> and the receipt of bonds for all officers required by law to be filed with the Secretary.<sup>62</sup> He or she compiles, publishes and distributes a roster of state and local public officials of California<sup>63</sup> and a directory of registered lobbyists.<sup>64</sup>

The Secretary's office also serves as a repository for the various registration forms, financial statements and expenditure reports which are required to be filed in accordance with the provisions of the *Political Reform Act of 1974*.<sup>65</sup> These documents, which are submitted by candidates, elected officials,

<sup>51</sup> *Government Code*, Section 12223.

<sup>52</sup> *Government Code*, Section 12224.

<sup>53</sup> *Government Code*, Sections 12224 and 12225.

<sup>54</sup> *Government Code*, Section 12172.5.

<sup>55</sup> *Elections Code*, Sections 9082-9090; *Government Code*, Sections 88000-88003.

<sup>56</sup> *Elections Code*, Sections 15501, 15503 and 15504. The candidates include those for statewide office, Assembly, Senate, Congress, Board of Equalization, and the Supreme, appellate, and superior courts.

<sup>57</sup> *Government Code*, Section 12165; *Elections Code*, Section 15501.

<sup>58</sup> *Government Code*, Sections 12165 and 12166.

<sup>59</sup> *Government Code*, Section 12159.

<sup>60</sup> *Government Code*, Section 12164.

<sup>61</sup> *Corporations Code*, Section 169.

<sup>62</sup> *Government Code*, Section 12163.

<sup>63</sup> *Government Code*, Sections 12240 and 12241.

<sup>64</sup> *Government Code*, Section 86109.

<sup>65</sup> *Government Code*, Section 81000, et seq.

campaign organizations, political organizations and by lobbyists and their employers, are available and open to public inspection in the Secretary's office.<sup>66</sup>

The Secretary of State must affix the Great Seal, with his or her attestation, to commissions, pardons and other public documents which require the Governor's signature.<sup>67</sup>

### ***The Attorney General***

The Attorney General is the chief law enforcement officer of the state and is elected at the same time and places as the Governor for a maximum of two four-year terms.<sup>68</sup> He or she receives a salary of \$151,127 per year.<sup>69</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the Attorney General becomes the fourth officer next in line of succession to the office of Governor.<sup>70</sup>

To be eligible for the office of Attorney General it is necessary to have been admitted to practice before the California Supreme Court for a period of at least five years immediately preceding election or appointment. While holding office, the Attorney General is prohibited from engaging in the private practice of law and is required to devote his or her entire time to the service of the state.<sup>71</sup>

It is the Attorney General's duty to see that the laws of the state are uniformly and adequately enforced throughout the state. He or she has direct supervision over every district attorney, sheriff, and such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices.<sup>72</sup>

Whenever, in the opinion of the Attorney General, any law of the state is not being adequately enforced in any county, it is his or her duty to prosecute such violations of law over which the superior court has jurisdiction, and in such cases, has the powers of the district attorney.

When required by the public interest, or directed by the Governor, the Attorney General assists any district attorney in the discharge of his or her duties.<sup>73</sup>

The Attorney General is the head of the Department of Justice, and, as such, he or she is the attorney in charge of all legal matters in which the state is interested, except the business of the Regents of the University of California or such other boards or officers as are authorized to employ their own attorneys. He or she is required to prosecute or defend all causes to which the state, or any state officer, is a party.<sup>74</sup>

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<sup>66</sup> *Government Code*, Section 81008.

<sup>67</sup> *Government Code*, Section 12162.

<sup>68</sup> *Constitution*, Article V, Section 11.

<sup>69</sup> *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>70</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058. The Attorney General succeeds after the Secretary of State.

<sup>71</sup> *Government Code*, Sections 12503 and 12504.

<sup>72</sup> *Government Code*, Sections 12550 and 12560.

<sup>73</sup> *Constitution*, Article V, Section 13.

<sup>74</sup> *Government Code*, Sections 12510–12512.



The law provides that, prior to circulation of any initiative or referendum petition for signatures, a draft of the petition must be submitted to the Attorney General so that he or she may prepare a title and summary of the chief purpose and points of the proposed measure.<sup>75</sup>

The Attorney General is a steward of the state's public land, water and resources, and he or she is authorized to initiate litigation to protect them.<sup>76</sup> He or she must institute investigations for the discovery of all real and personal property to which the state may be entitled by escheat.<sup>77</sup>

It is also the duty of the Attorney General to issue opinions on questions of law, in writing, to the Legislature, to the Governor, the Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, any state agency prohibited by law from employing legal counsel other than the Attorney General, and any district attorney, when required by their respective offices.<sup>78</sup> He or she serves as legal adviser to all the state departments, as well as other important state boards and commissions.<sup>79</sup>

In the absence of the Chief Clerk and the inability of the senior members-elect present to agree upon one of their number to preside on the opening day of a legislative session, the Attorney General or one of his or her deputies shall call the Assembly to order.<sup>80</sup>

### ***The State Treasurer***

The State Treasurer is elected at the same time and places and in the same manner as the Governor for a maximum of two four-year terms<sup>81</sup> and receives a salary of \$139,189 per annum.<sup>82</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the State Treasurer becomes the fifth officer next in line of succession to the office of Governor.<sup>83</sup>

The Treasurer serves as the state's banker. It is his or her duty to receive and keep in the vaults of the State Treasury or on deposit in banks or credit unions, all moneys belonging to the state not required to be received and kept by some other person, and receive and keep in the vaults of the State Treasury or on deposit with any Federal Reserve bank, or with certain designated banks or trust companies, bonds and other securities or investments belonging to the state.<sup>84</sup> The Treasurer must pay warrants drawn by the Controller, except warrants canceled pursuant to law, and keep an account of all money received

<sup>75</sup> Constitution, Article II, Section 10(d); Elections Code, Section 9002.

<sup>76</sup> Government Code, Section 12518.

<sup>77</sup> Government Code, Section 12540. "In American Law 'escheat' signifies a reversion of property to the State in consequence of a want of any individual competent to inherit. The State is deemed to occupy the place and hold the rights of the feudal lord."—*Black's Law Dictionary*, Third Edition.

<sup>78</sup> Government Code, Section 12519. These opinions, while not controlling as a matter of law, have been accorded great deference by the courts.

<sup>79</sup> Government Code, Section 11157; and, e.g., Business and Professions Code, Sections 2020, 2317, 3027 and 4804.

<sup>80</sup> Government Code, Section 9023.

<sup>81</sup> Constitution, Article V, Section 11.

<sup>82</sup> Constitution, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>83</sup> Constitution, Article V, Section 10; Government Code, Section 12058. The Treasurer succeeds after the Attorney General.

<sup>84</sup> Government Code, Section 12320.

and disbursed.<sup>85</sup> A daily report must be filed with the Controller, indicating the amounts disbursed during the preceding day and the funds out of which they were paid.<sup>86</sup>

The State Treasurer is the Chairperson of the Pooled Money Investment Board which is charged with investing idle state moneys.<sup>87</sup> Earnings for the board's program for the fiscal year ending June 30, 2008 totaled \$2.745 billion, representing an overall earning rate of 4.32%. The Treasurer is a member of the California Pollution Control Financing Authority,<sup>88</sup> the Chairperson of the California Educational Facilities Authority<sup>89</sup> and on a variety of finance committees which approve the sale of bonds.

The State Treasurer is responsible for selling all state bonds. During the 2007–08 fiscal year, the Treasurer's office sold bonds totaling \$23.5 billion. The various types of bonds sold during this time period and their subtotals were general obligation bonds (\$11.9 billion), lease-revenue bonds (\$489.7 million), Department of Veterans Affairs bonds (\$91.2 million), revenue anticipation (short-term) notes (\$7 billion), and Economic Recovery bonds (\$4.1 billion).

At the request of either house of the Legislature, or of any committee thereof, the Treasurer must give written information as to the condition of the Treasury, or upon any subject relating to the duties of the office.<sup>90</sup>

The State Treasurer's accountability for cash and securities as of June 30, 2008 was in excess of \$69.95 billion.

On or before the 15th day of September in each even-numbered year, the Treasurer must report to the Governor the exact balance in the Treasury to the credit of the state, and a summary of the receipts and payments of the Treasury during the two preceding fiscal years.<sup>91</sup>

### ***The State Controller***

The State Controller is the chief fiscal officer of the state and is elected at the same time and places and in the same manner as the Governor, for a maximum of two four-year terms.<sup>92</sup> The Controller has a wide variety of duties, which have been established both by the Constitution and by statute. His or her salary is \$139,189 per annum.<sup>93</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the State Controller becomes the sixth officer next in line of succession to the office of Governor.<sup>94</sup>

<sup>85</sup> *Government Code*, Sections 12324 and 12326.

<sup>86</sup> *Government Code*, Section 12328.

<sup>87</sup> *Government Code*, Sections 16480.1 and 16480.2.

<sup>88</sup> *Health and Safety Code*, Section 44515.

<sup>89</sup> *Education Code*, Section 94120.

<sup>90</sup> *Government Code*, Section 12330.

<sup>91</sup> *Government Code*, Section 12329.

<sup>92</sup> *Constitution*, Article V, Section 11.

<sup>93</sup> *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>94</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058. The Controller succeeds after the Treasurer.

The Controller manages the State's finances, issues warrants for payment from the State Treasury, brings in revenue through audits and collections and influences policy through his or her participation in more than 50 boards and commissions.

No money can be drawn from the Treasury unless it is against an appropriation made by law, and upon warrants duly drawn by the Controller.<sup>95</sup>

Upon request, the Controller is required to provide the Legislature, or either house thereof, with written information relative to the fiscal affairs of the state or the duties of his or her office.<sup>96</sup>

The Controller has broad authority to audit the expenditure of state funds and may audit local agencies that receive State funds to ensure taxpayer dollars are spent according to law. Among other duties provided by law, the Controller must superintend the fiscal affairs of the state and suggest plans for the improvement and management of public revenues.<sup>97</sup> He or she must keep all accounts in which the state is interested, and keep a separate account of each specific appropriation, showing at all times the balance of the appropriation.<sup>98</sup>

The Controller supervises the state's fiscal concerns and audits all claims against it.<sup>99</sup> He or she directs the collections of all moneys due the state, and if necessary, is authorized to go to court to recover the property or money owed.<sup>100</sup>

Claims for refunds under the Vehicle Fuel Tax Law must be presented to and paid by the Controller.<sup>101</sup> He or she has general supervision over the general procedure for tax sales, tax deeds, and redemptions and to this end may make any rules and regulations he or she deems advisable.<sup>102</sup>

In addition to the duties of his or her office, the State Controller is an ex officio member of the State Board of Equalization,<sup>103</sup> serves on the Franchise Tax Board,<sup>104</sup> the California Public Employees' Retirement System,<sup>105</sup> the California State Teachers' Retirement System,<sup>106</sup> the State Lands Commission,<sup>107</sup> the State Board of Control,<sup>108</sup> the Pooled Money Investment Board,<sup>109</sup> the State School Building Finance Committee,<sup>110</sup> the California Water Resources Development Finance Committee,<sup>111</sup> and other important state boards and committees.

<sup>95</sup> *Government Code*, Section 12440.

<sup>96</sup> *Government Code*, Section 12462.

<sup>97</sup> *Government Code*, Section 12411.

<sup>98</sup> *Government Code*, Section 12412.

<sup>99</sup> *Government Code*, Section 12410.

<sup>100</sup> *Government Code*, Section 12418.

<sup>101</sup> *Revenue and Taxation Code*, Sections 8101–8103.

<sup>102</sup> *Revenue and Taxation Code*, Section 158.

<sup>103</sup> *Constitution*, Article XIII, Section 17.

<sup>104</sup> *Government Code*, Section 15700.

<sup>105</sup> *Government Code*, Section 20090.

<sup>106</sup> *Education Code*, Section 22200.

<sup>107</sup> *Public Resources Code*, Section 6101.

<sup>108</sup> *Government Code*, Section 13901. The "State Board of Control" refers to the "California Victim Compensation and Government Claims Board."

<sup>109</sup> *Government Code*, Section 16480.1.

<sup>110</sup> *Education Code*, Section 15909.

<sup>111</sup> *Water Code*, Section 12933.

### ***The Superintendent of Public Instruction***

The Superintendent of Public Instruction is a nonpartisan officer, elected to four-year terms at the same time and places as the Governor, and is subject to a similar limit of two terms.<sup>112</sup> The annual salary for this statewide officer is \$151,127.<sup>113</sup>

The Superintendent is the ex officio Director of Education<sup>114</sup> and a member of the Board of Regents of the University of California.<sup>115</sup> He or she is Secretary and Executive Officer of the State Board of Education,<sup>116</sup> and, under its direction, executes the policies which have been decided upon by the board, and directs the work of all appointees and employees of the board.<sup>117</sup>

He or she must superintend the schools of this state and prescribe regulations under which contracts, agreements, or arrangements may be made with agencies of the federal government for funds, services, commodities, or equipment to be made available to schools under the jurisdiction of the State Board of Education and the Superintendent of Public Instruction.<sup>118</sup>

The California Schools for the Deaf and for the Blind are also under the supervision of the Superintendent.<sup>119</sup> He or she also administers three diagnostic schools for neurologically handicapped children.<sup>120</sup> The Superintendent must prescribe rules for their government, appoint the superintendents and other officers and employees, fix the compensation of teachers, and contract with the University of California, or with other public or private hospitals or schools of medicine, for the establishment and maintenance of diagnostic service and treatment centers for neurologically handicapped children.<sup>121</sup> He or she may also authorize the schools to establish and maintain teacher training courses to prepare teachers to instruct neurologically handicapped children in special classes in the public school system; and he or she must prescribe the standards for admission to these courses and for the contents of the courses.

By July 25th of each year, the Superintendent prepares an estimate of the amount of state school money that will be apportioned to each county or city for the current school year.<sup>122</sup>

### ***The State Board of Equalization***

The Board of Equalization was created by the State Constitution of 1879. The board consists of five voting members: four members elected for four-year terms at gubernatorial elections and the State Controller, who serves ex officio. The state is divided into four Board of Equalization districts with the

<sup>112</sup> *Constitution*, Article IX, Section 2.

<sup>113</sup> *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>114</sup> *Education Code*, Section 33303.

<sup>115</sup> *Constitution*, Article IX, Section 9.

<sup>116</sup> *Education Code*, Section 33004.

<sup>117</sup> *Education Code*, Section 33111.

<sup>118</sup> *Education Code*, Section 33113. *See also*, Sections 33113–33124.

<sup>119</sup> *Education Code*, Sections 59002 and 59102.

<sup>120</sup> *Education Code*, Sections 59200–59204.5.

<sup>121</sup> *Education Code*, Section 59203.

<sup>122</sup> *Education Code*, Section 33118.

voters of each district electing one member to no more than two terms.<sup>123</sup> A member of the board must be an inhabitant of the district for which he or she is chosen for the one year preceding his or her election or appointment.<sup>124</sup> Each member of the board receives \$130,490 per annum.<sup>125</sup>

The board has a wide variety of duties established by the Constitution and by statute. The California Constitution directs the board to ensure equity and uniformity relative to the assessment of all properties assessed by the 58 county assessors;<sup>126</sup> annually assess pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity;<sup>127</sup> assess taxes on insurance companies;<sup>128</sup> and assess and collect the excise taxes on the manufacture, importation and sale of alcoholic beverages.<sup>129</sup>

The board performs quasi-judicial, quasi-legislative, and administrative functions.

In its quasi-judicial role, the board serves as the appellate body in hearing and adjudicating appeals on final actions of the Franchise Tax Board under the state's Bank and Corporation Tax, Personal Income Tax, and the Senior Citizens Property Tax Assistance Laws.

In its quasi-legislative capacity, the board adopts rules and regulations and issues directives for the guidance of taxpayers, county assessors, and county assessment appeals boards.

In its administrative role, the board determines the values of companies assessed by the state for local property taxation and is the sole administrative agency for the following taxes: sales and use,<sup>130</sup> Bradley-Burns Uniform Local Sales and Use,<sup>131</sup> district transactions and use,<sup>132</sup> use fuel,<sup>133</sup> private railroad cars,<sup>134</sup> cigarettes and tobacco products,<sup>135</sup> alcoholic beverages,<sup>136</sup> timber yield,<sup>137</sup> energy resources surcharge,<sup>138</sup> 911 emergency telephone users surcharge,<sup>139</sup> and hazardous substances.<sup>140</sup>

The board assists in the administration of the motor vehicle fuel tax (gasoline and aircraft fuel),<sup>141</sup> and the ocean marine insurance tax.<sup>142</sup>

<sup>123</sup> *Constitution*, Article XIII, Section 17. The districts are reapportioned by the Legislature after each decennial census. *Constitution*, Article XXI, Section 1; *Elections Code*, Sections 21300–21301.

<sup>124</sup> The first woman elected to a “constitutional office” was Orfa Jean Shontz, elected to the BOE District 4 in 1934. Ivy Baker Priest was the first woman elected to a statewide office (Treasurer) in 1966.

<sup>125</sup> *Government Code*, Section 11552. See also, *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 47.

<sup>126</sup> *Constitution*, Article XIII, Section 18.

<sup>127</sup> *Constitution*, Article XIII, Section 19.

<sup>128</sup> *Constitution*, Article XIII, Section 28(h).

<sup>129</sup> *Constitution*, Article XX, Section 22.

<sup>130</sup> *Revenue and Taxation Code*, Sections 6001–7176.

<sup>131</sup> *Revenue and Taxation Code*, Sections 7200–7212.

<sup>132</sup> *Revenue and Taxation Code*, Sections 7251–7273.

<sup>133</sup> *Revenue and Taxation Code*, Sections 8601–9355.

<sup>134</sup> *Revenue and Taxation Code*, Sections 11201–11702.

<sup>135</sup> *Revenue and Taxation Code*, Sections 30001–30479.

<sup>136</sup> *Revenue and Taxation Code*, Sections 32001–32556.

<sup>137</sup> *Revenue and Taxation Code*, Sections 38101–38908.

<sup>138</sup> *Revenue and Taxation Code*, Sections 40001–40191.

<sup>139</sup> *Revenue and Taxation Code*, Sections 41001–41150.

<sup>140</sup> *Revenue and Taxation Code*, Sections 43001–43651.

<sup>141</sup> *Revenue and Taxation Code*, Sections 7301–8404.

<sup>142</sup> *Revenue and Taxation Code*, Sections 12001–12107.

*The Insurance Commissioner*

The California Insurance Code establishes the office of Insurance Commissioner who is elected in the same place and manner as the Governor and serves a maximum of two four-year terms.<sup>143</sup> The Insurance Commissioner receives an annual salary of \$139,189.<sup>144</sup>

The Insurance Commissioner determines the sufficiency of securities to be given by those engaged in the insurance business<sup>145</sup> and no person may transact any class of insurance business without first being certified by the commissioner.<sup>146</sup> Beyond these provisions, the Commissioner is given broad powers to directly supervise the Department of Insurance<sup>147</sup> and to perform all duties under law in regulating the business of insurance in the state.<sup>148</sup>

The Commissioner's powers to certify compliance with applicable state law extend to approval of insurance forms,<sup>149</sup> approval of an insurance company's corporate name (as a prerequisite to the Secretary of State's filing of the articles of incorporation),<sup>150</sup> and, upon request of the State Treasurer, certification of qualifications of surety insurers for state demand or timed deposits or state investments in federal bonds.<sup>151</sup> The Commissioner also is designated to receive and administer a \$100,000 deposit from each title insurance company doing business in the state as a guarantee fund for the security and protection of title insurance policyholders.<sup>152</sup>

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<sup>143</sup> *Insurance Code*, Section 12900. A term limit for the Insurance Commissioner was added by *Statutes of 1993*, Chapter 1227.

<sup>144</sup> *Government Code*, Section 11552. *Insurance Code*, Section 12902. See also, footnote 3, *supra*, p. 47.

<sup>145</sup> *Insurance Code*, Section 12920.

<sup>146</sup> *Insurance Code*, Section 700.

<sup>147</sup> *Insurance Code*, Section 12906.

<sup>148</sup> *Insurance Code*, Section 12921.

<sup>149</sup> See, e.g., *Finance Code*, Sections 22455 and 22314.

<sup>150</sup> *Corporations Code*, Section 201.5.

<sup>151</sup> *Government Code*, Sections 16527 and 16616.

<sup>152</sup> *Insurance Code*, Section 12350.







**HENRY A. LYONS,**  
Associate Justice,  
Dec. 1849 to Mar. 1852.



**S. C. HASTINGS,**  
Chief Justice,  
Jan. 1850 to Jan. 1852.



**NATHANIEL BENNETT,**  
Associate Justice,  
Dec. 1849 to Oct. 1851.

### The first Supreme Court of California, 1849

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*William A. Porter, San Francisco, CA*

### The California Supreme Court, 2011

Seated, from left to right: Associate Justice Joyce L. Kennard,  
Chief Justice Tani G. Cantil-Sakauye, Associate Justice Marvin R. Baxter.  
Standing, from left to right: Associate Justices Carlos R. Moreno (retired in 2011),  
Kathryn M. Werdegar, Ming W. Chin, and Carol A. Corrigan.